United States Court of Appeals

for the Second Circuit

APPELLANT'S BRIEF

TO BE SUBMITTED.

74-2003

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

IN RE FELIPE SADIN,

NO. 74/2003

Appellant.

APPEAL FROM A JUDGMENT OF
CONVICTION FOR CIVIL CONTEMPT

August 2, 1974

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II. Whether under the Immunity Statute a person who has been convicted of the offense being investigated by the Grand Jury may be compelled to give testimony against a co-defendant who is awaiting trial and whether the conviction and sentence for contempt for refusal to so testify has the effect of punishing defendant twice for the same offense.

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STATEMENT OF CASE

A. Preliminary Statement

This appeal is from a Judgment and Order of the United States District Court (Judge Duffy) entered on July 17, 1974 adjudging FELIPE SADIN in civil contempt pursuant to Title 28, Sec. 1826 for refusal to answer certain questions before the Grand Jury, after having been granted immunity, and sentencing him to the custody of the Attorney General for the term of the Grand Jury or until he shall have purged himself, but not to exceed 18 months.

The defendant was committed forthwith and commenced service of the sentence imposed on him.

Immediately thereafter Judge Duffy ordered the United States Attorney to arrange for the assignment of Spanish-speaking counsel for the witness, there being no dispute that he was not then represented by counsel actually present and had not at any time throughout the proceedings. (TR. 7/19/74 p. 8). Present counsel was assigned on that day, conferred with the witness in the detention cell in the Courthouse, and took immediate steps to obtain a hearing before Judge Duffy in an effort to have the judgment set aside and vacated and to obtain the release of the defendant. Because of other commitments the Court was unable to grant counsel and the appellant a hearing until Friday morning, July 19, 1974, at which time, although counsel requested that

appellant be present he was not produced (TR. 6/19/74, p. 7). Then, for the first time, counsel was permitted to read a copy of the proceedings before Judge Duffy and the Grand Jury of July 17, 1974 wherein the Judge summarily adjudged and sentenced the appellant for contempt. (G.J. Minutes 7/17/74). No copy of the Judgment and Order was served on the appellant until the afternoon of July 19, 1974 - at which time he had been in jail for two days - and counsel was not served with a copy until July 18, 1974. In order to have the appellant present and to enable counsel to read the transcript of the contempt proceedings, the hearing was adjourned to the afternoon of July 19, the appellant remaining in custody throughout, although counsel requested his immediate release, and that the Court reconsider and set aside its decision. (TR. 7/19/74 pp. 5-6, 12). The appellant was produced for the afternoon hearing, at which time counsel renewed her request that the Court set aside and vacate the judgment and sentence and in the alternative sought a stay or discharge of the defendant on bail or parole. (TR. 7/19/74 pp. 21022). The Court denied counsel's application to set aside the judgment and conviction but did release the appellant on his own recognizance pending the determination of the present appeal (TR. 7/19/74 pp. 36-37, 45).

Notice of appeal was filed by counsel that very day and she was assigned by this Court to continue appellant's representation.

B. Statement of Facts

The appellant is a 29 year old, Spanish speaking Cuban who is lawfully in this country under a visa for permanent residence. He understands and speaks no English and required an interpreter at all stages of the proceedings.

On April 11, 1974 he was indicted with one Hugo Curbello in the Southern District of New York, charged in two counts with a conspiracy to violate and with the substantive violation of Title 21 USC Secs. 812, 841(a)(1), (b)(1)(A) in that on November 7, 1972 he and "others to the Grand Jury unknown" did distribute and possess 130 grams of cocaine. (App. Ex. 2). On April 11, 1974 the indictment was transferred to the Northern District of Ohio for plea and sentence and on 6/28 , 1974 Sadin pleaded guilty to both counts. At the request of the government sentence was set for August 1, 1974.

On July 9, 1974 and again on July 17, 1974 Sadin was summoned before the Grand Jury in the Southern District of New York under subpoena and asked specifically concerning the activities charged in the indictment as to which he had pleaded guilty and been convicted. Thus,

> "Q *** I want to tell you right now that this Grand Jury is investigating alleged violations of the Federal narcotics laws relating to the sale, possession and conspiracy involving cocaine. Do you understand that? A Yes.
>
> Q You have pleaded guilty, have you not, to certain of the charges in indictment 743 Cr. 381 in the case of United States of America versus Hugo Curbello and Felipe Sadin. A The only thing I pleaded guilty on my own name and I was transporting on my own name alone.

Q When you say that you were transporting, are you referring to the transportation of cocaine? A Yes.

Q You have retained a lawyer in connection with this case, isn't that correct? A In Ohio.

Q And his name is Mr.Kaplan, is that correct? A Yes.

Q And you have conferred with Mr. Kaplan prior to coming before the Grand Jury today, isn't that correct? A The day the Assistant Attorney in Ohio gave me an interview and told me I had to come here and explained me what for.

Q And at that time your attorney, Mr. Kaplan, was present at that interview, is that right? A Yes.

Q And you spoke to your attorney about the procedure before this Grand Jury, isn't that correct? A Yes.

Q Do you know a man named Hugo Curbello? A I refuse to answer any questions.

Q What is the reason that you refuse to answer? A I have no reason but I do not want to answer any questions.

Q I want to advise you at this time, Mr. Sadin, that the consequences of intentionally refusing to answer questions before a Grand Jury without any justification is that you may be subjected to a contempt citation for contempt of this Grand Jury? A I pleaded guilty and I believe I have a right to refuse to answer the question." (G. J. Minutes 7/9/74, pp. 1 - 3).

He was instructed by the United States Attorney and the Foreman to answer the questions put to him and when he refused and was warned by the United States Attorney that he could be cited in contempt, he replied, "Very well, but this laws I do not know anything about." (G.J. Minutes 7/9/74, p. 3). He was then brought before Judge Ward; the United States Attorney informed him of the witness' refusal to answer and said, "When

I asked the basis he gave none," [for his refusal], which was not an accurate version of what had happened (G.J.M., Ward, J., p. 7). Before Judge Ward the witness stated "Fifth Amendment" and the Court sustained his privilege. He was not represented by counsel when he appeared before Judge Ward.

At that time, apparently, he was served with another subpoena returnable on July 17, 1974.

The witness returned to the Grand Jury on July17, 1974 and again was told:

> "You are appearing today before the August 1973 Special Grand Jury, which is investigating alleged violations of the Federal narcotics statutes, including violations of Title 21 of the United States Code, Sections 810, 841 and 846. Do you understand that? A Yes.

(G.J.M. 7/17/74, p. 1)

He was then advised of his right to refuse to answer for "just cause", of his right to have counsel outside the Grand Jury room, and of his right not to answer any questions before he had an opportunity to consult with counsel. This was followed by the statement by the United States Attorney that it was the understanding of the United States Attorney that the witness had consulted with counsel in Ohio in connection with the Grand Jury proceeding. The United States Attorney then referred to the plea of guilty in Ohio and to the fact that the witness was awaiting sentence on that conviction. He was then asked:

"Q Do you know a Mr. Hugo Curbello: A I refuse to answer any questions.
Q How long have you known Mr. Hugo Curbello? A I refuse.
Q You know Ramon Felix Torres? A I refuse."

(G.J.M. 7/17/74, p. 3)

and also several questions relating to narcotics transactions with other named individuals. Upon the witness' refusal to answer because of "Fifth Amendment" he was directed to do so by the Foreman and advised that the Government had procured an order of Immunity which was read and translated for him. The United States Attorney then paraphrased the statute to him, Sec. 1826 of Title 18 and completed his explanation by asking the witness:

> "Q *** Do you understand that? A No, I'm sorry, I didn't understand very well." (G.J.M. 7/17/74, p. 9).

This was followed by a further paraphrasing of the technical provisions of the statute. The witness was then misinformed that <u>in addition</u> to the civil contempt statute he could be prosecuted under the Federal Criminal Code for his failure to testify without "proper cause" (p. 9, <u>supra</u>) to which the witness replied,

> <u>"I want to tell him that I already pled guilty</u>, that I came here to testify, but I refuse to testify". (p. 10, G.J.M. 7/17/74).

The questions were again put to him and upon his refusal, he was brought before Judge Duffy who was informed that the witness had invoked the Fifth Amendment, that the witness had stated that he had consulted with an attorney in Ohio (whereas in fact all the witness had done was answer "yes" to the Assistant District Attorney's statement to this effect.) Judge Duffy was not told the specific basis for the witness' refusal, i.e., his plea of guilty. The Government moved "pursuant to Title 18 - Title 28 - United States Code, Section 1826, in connection with a recalcitrant witness" (G.J.M. 7/17/84, J. Duffy, pp. 15-16). The Court was informed that the Government had obtained an order of Immunity against the witness. The Court then asked the witness whether "certain questions" had been asked of him and whether he still refused "to answer those questions", and upon the witness' answer in the affirmative, instructed the witness that there was a law permitting the Court to summarily place him in confinement if he refused to testify "without good cause"; that if he continued to refuse he could be placed in custody until February, 1975; whether "under the circumstances" he still wished to refuse to answer, and whether he had had an opportunity "to discuss your appearance with an attorney"; when the witness answered "yes", the Court said "Then you know exactly what you're doing, is that correct?", to which the witness answered "yes". At that point the Court said:

"JUDGE DUFFY: All right, pursuant to the authority set out in Title 28, Section 1826, you, Felipe Sadin, are remanded to the custody of the Attorney General until such time as the term of this Grand Jury has expired. Mr. Schatten, call the marshal.

[Mr. Schatten summons two marshals from outside courtroom door]

JUDGE DUFFY: The record will reflect at this point two Deputy Marshals have entered the courtroom. Marshal, I have just entered an order confining this particular witness, Felipe Sadin, to the custody of the Attorney General until such time as the term of Grand Jury has concluded, such confinement not to exceed eighteen months. Take him away." (G.J.M. 7/17/74, p. 17)

Thereafter Judge Duffy ordered counsel assigned to the witness, because "the possibility" of ending up in jail, which he had discussed with counsel in Ohio, had become "an actuality". (GJM 7/17/74, p. 19).

The Government's application for Immunity contains the usual recitals of "good faith" and "public interest" and states that the investigation is into alleged violations of Federal statutes involving narcotics, conspiracy and distribution -including Secs. 812, 841 and 846, and that the witness has invoked his constitutional privilege against self-incrimination. No mention was made of the specific ground he had invoked - his conviction for the conspiracy and distribution of narcotics(App. Ex.1). The same is true of the affidavit of Assistant United States Attorney Schatten, sworn to July 17, 1974, although he recites that he was present in the Grand

Jury when the witness refused and invoked his privilege. What appears to be a telex dated July 15, 1974 which was confirmed by letter of the same date, refers specifically to the request of the United States Attorney "requiring Felipe Sadin to give testimony or provide other information pursuant to 18 U.S.C. 6002-6003 in the matter of the grand jury investigation into violations of the controlled substances Act and in the case of United States v. Hugo Curbello, et al 74 Cr. 381 (S.D.N.Y.)..."

The order of Immunity was entered by the Court on July 17, 1974 and understandably did not recite the specific case as to which the testimony was sought, but traveled on the general language of the application, which had failed to mention it.

Counsel sought inspection of all documents underlying the Order, but this was refused. (Tr. 7/19/74. pp. 31-32).

I. ARGUMENT

APPELLANT WAS DEPRIVED OF HIS LIBERTY WITHOUT DUE PROCESS OF LAW IN THAT HE WAS INCARCERATED WITHOUT NOTICE, WITHOUT A HEARING AND WITHOUT THE ASSISTANCE OF COUNSEL

A. Failure to Have Counsel

There is no question but that from the time the

appellant first appeared before the Grand Jury on July 9 until he found himself in the Federal Prison serving a 18-month sentence he had not had the effective assistance of counsel to guide his steps.

Undoubtedly the Government will rely on appellant's answer "yes" to the prosecutor's statement that he had an attorney in Ohio and that he had consulted with him with respect to the pending subpoena, as well as on appellant's failure to request counsel, to demonstrate that appellant had counsel or that he waived his presence.

Assuming counsel in Ohio, over 600 miles away, could be considered "the guiding hand of counsel" (Powell v. Alabama, 287 U.S. 45, 69 (1932), it is clear from the affidavit of Robert Kaplan, Ohio counsel (App. Ex.3) that he represented appellant solely in connection with the plea and sentence in the Ohio District Court and in no way before the Grand Jury. And if the witness had discussed the matter with counsel, and it appears that he did so in the presence of the United States Attorney in Ohio (G.J. Minutes 7/9/74, p. 2), the inability to consult with him as the questions were put to the witness in the Grand Jury and at all subsequent times as the proceedings relentlessly moved on toward contempt and prison, would not amount to adequate representation. At no time either

before Judge Ward or Duffy was counsel present when the witness refused to answer, when he was directed to, when he was adjudged in contempt and sentenced and delivered up to the Marshals.

The absence of counsel initially was the source from which flowed a series of events, so lacking in fundamental fairness, as to constitute a denial of due process and a deprivation of the appellant's sixth amendment right sufficient to vitiate the conviction and sentence herein.

In U.S. v. Handler, 476 F. 2d 709 (C.A. 2, 1973) this Court refused to vacate a conviction for contempt upon a specific finding that the contemnor had had counsel at the contempt proceeding who had fully informed the witness of the nature and consequences of the proceedings at every step. The court distinguished U.S. v. Sun Kung Kang, 468 F. 2d 1369 (C.A. 9, 1973) where a civil contempt under Sec. 1826 was reversed solely because the witness did not have counsel when he was adjudged in contempt, the Court pointing out that the civil label of the proceedings did not obscure the penal nature of the proceedings, citing Harris v. U.S., 382 U.S. 162 (1965).

In Argersinger v. Hamlin, 407 U.S. 25, (1971), the Supreme Court held that before a defendant may be deprived of his liberty

he must have counsel irrespective of the length of the sentence to be served. Duncan v. Louisiana, 391 U.S. 145 (1968).

As for any waiver, "absent a knowing and intelligent waiver, no person may be imprisoned for any offense, unless he was represented by counsel at his trial". Powell v. Alabama, supra.

It could hardly be argued that this Spanish-speaking witness' failure to request counsel through the Government interpreter at a time when he was physically before the Grand Jury was a "knowing and intelligent waiver". Certainly, the record is clear that neither Judge Ward nor Judge Duffy inquired of him as to his need for counsel or sought to appoint counsel for him. In any event, failure to request or appoint counsel while the witness was before the Grand Jury, is no excuse for failure to require counsel when he was adjudged guilty and sentenced, - when the possibility of prison had become a reality, as Judge Duffy belatedly recognized.

On this ground alone the conviction must be reversed. United States v. Wilson and Bryan, 488 F. 2d 1231 (C.A. 2, 1973).

B. The Failure to Give Appellant Notice of the Proceedings and a Hearing.

Initially, appellant who did not speak or understand English,was served with a subpoena written in English which merely summoned him to the Grand Jury. (App. Ex. 4) The details of the facts of the service upon him are not in possession of counsel (since there never has been a hearing), so that there is no way of knowing whether the language and purpose of the subpoena was explained to him in Spanish. What does appear is that he endorsed it in Spanish: "Yo recibi una copia para comparecer el dia 17 de julio de 1974. Felipe Sadin" - ("I received a copy to appear the 17th day of July, 1974"). In view of the repeated questions concerning the transaction charged in the indictment of which he stood convicted and his assertion to the Grand Jury that since he had pleaded guilty to the indictment he did not think he was under a duty to testify, it is not unreasonable to assume that he thought his testimony before the Grand Jury was a proceeding under that indictment. This would also explain why he stated that he had an attorney in Ohio. The subpoena stated that the Grand Jury was investigating "alleged violations of Section 846, Title 21, USC (relating to narcotic conspiracy)".

It seems to be elementary that before one can be punished for failure to testify pursuant to subpoena, he must be apprised of its nature and purpose. There is a total failure of any such proof in the record in this case. Harris v. U.S., 334 F. 2d 460, C.A. 2, 1964, rev'd o.g., supra.

Second: At no time was the purpose or content of the Immunity Order explained to him, other than the brief statement by Judge Duffy and the paraphrasing by the prosecutor of the statutory language, translated by a Government interpreter, which served but to further confuse the witness, as evidenced by his answer to the prosecutor's question of whether he understood, "No, I'm sorry, I didn't understand very well." (G.J.M. 7/17/74, p. 9)

Third: Appellant was never given notice or apprised of the proceedings by which he was adjudged in contempt and sentenced. The U. S. Attorney's statement to the Court that he was applying "in connection with a recalcitrant witness", said nothing. Appellant was never served with an order to show cause as to why he should not be held in contempt nor were the specifications upon which the contempt was based ever set forth. When he appeared before Judge Duffy, the questions were not read to the Court, the

Court did not put them to him and he was never ordered to answer them, nor was he sent back to the Grand Jury to answer them; and no inquiry was made of him as to his reason for refusing to answer. They form no part of the record of the contempt proceedings. He did not refuse to answer them in the presence of the Court, and it is questionable whether this constitutes contempt. Harris v. U. S., supra. When the Court sentenced him he was not told that he could purge himself; and finally, he was not served with the Order and Judgment of Commitment until after he had been in a jail for two days. (Tr. 7/17/74 pp. 3-4; 7/19/74 pp. 15, 18).

Even though the Court was dealing with a civil contempt the "usual due process requirements" may not be dispensed with, Shillitani v. U. S., 384 U.S. 364, 1966. In fact, the more summary the proceedings, the greater the need for adequate notice.

In Handler, supra, this Court held that formal notice was not required because the sentencing Court had explained the Order of Immunity to the contemnor and his attorney, his attorney had waived specifications of contempt, both had admitted on the record that they had "actual knowledge" of the proceedings, and the Government had furnished

appellant and counsel with a memorandum of law and the necessary papers for contempt and commitment "on the due process procedural grounds". Moreover, the specific questions had been asked of the witness in the presence of counsel and the Court, and he was given two separate opportunities to go back before the Grand Jury to answer them.

In U. S. v. Russo, 448 F. 2d 369 (C.A. 9, 1971), the Court held the notice sufficient where counsel was present at all times from the entry of the order of immunity, and was given opportunity to argue on behalf of the witness when he refused to answer, the hearing on contempt was held on a week's notice, and the Government had served a memorandum of law. "It was incumbent upon the Court unequivically to order the petitioner to answer", (Brown v. United States, 359 U.S. 41) and "in the clearest terms," (U.S. v. Chandler, 380 F. 2d 993, 1000, (C.A. 2, 1967)).

Finally, the Judgment and Order of Contempt recited that the witness refused to answer with "full understanding of his obligation to testify." With deference to the Court below, it is submitted that no such finding could be made on the record before the Court. In re Goldberg, 472 F. 2d, 513, (CA 2, 1973).

The proceedings culminated in the summary delivery of the appellant to the Marshalls with no stay to give him an opportunity to contact counsel or apply for bail before the jail doors closed him in. As a consequence he spent two days in jail before counsel was able to obtain his release.

At all times the witness's refusal to answer the Grand Jury was respectful. "Well entrenched authority" is that summary procedure may not be used to punish a respectful testimony refusal. Harris v. U.S., supra. In U. S. v. Marra, 482 F. 2d 1196, (C.A. 2, 1973), it was held that where the exigency of time required it, the witness could be summarily incarcerated on a civil contempt, the Court "scheduling a hearing at an early date pursuant to Rule 42(b)."

There was no exigency of time here: the Grand Jury will last until February, 1975 and may be extended.

The absence of counsel at this momentous stage of the proceedings deprived the appellant of his constitutional right to a reasonable time to make a decision as to his future conduct. U. S. A. v. Smilow, 487 F. 2d 38, (C.A. 2, 1973); U. S. v. Wilson & Bryan, 488 F. 2d 1231 (C.A. 1973); In Re Goldberg, supra; In Re Evans, 452 F. 2d 1239, (App. D.C. 1971).

Because of grave procedural irregularities, the conviction must be set aside.

II. THE ORDER OF IMMUNITY UNDER SECTION 6003 WAS INEFFECTIVE TO CONFER IMMUNITY ON THE WITNESS: HE STOOD CONVICTED OF THE VERY CRIMES WHICH THE GRAND JURY WAS INVESTIGATING: HE HAS BEEN PUNISHED TWICE.

Under Section 1826, 28 USC, the Court had to make a finding that the appellant had refused to answer "without just cause." This is a prerequisite to a finding of civil contempt. Had the appellant been afforded "an unhibited adversary hearing" with counsel present, (U. S. v. Dinsio, 468 F. 2d, 1392 (C.A. 9, 1972)), it is clear that he could have shown "just cause" for his refusal sufficient to shift the burden to the Government to establish the validity of its Immunity Order.

The immunity granted by the statute is not self-executing; it must be applied for by the U. S. Attorney and granted by the Court upon a sufficient showing that the statutory requirements have been met. 18 USC Sec. 6002-6003. And when a challenge is made to the testimony sought on the ground that it is not covered by the Immunity Order, the

burden is on the Government to make a "modest showing" of the necessity and materiality of the testimony sought under the statutory authorization. In Re Vericker, 446 F. 2d 1971 (C.A. 2, 1971); Bacon v. U. S., 446 F. 2d 667, (C.A. 9, 1971); Bursey & Presley v. U. S., 466 F. 2d 1059 (C.A. 9, 1972); U. S. v. DiMauro, 441 F. 2d 428 (C.A. 8, 1971).

> "A grant of immunity can be effective only if the witness to whom it is extended is then 'under investigation' for one of the crimes itemized in the pertinent immunity statutes." In re Evans, 452 F. 2d 1239, (App. D.C. 1971), citing In Re Vericker, supra.

In In Re Vericker, supra, the conviction for contempt was set aside bacause the Court found that the testimony sought by the Grand Jury dealt with crimes other than those sought to be immunized under the statute and recited in the Order so that the statutory immunity could never take effect. While that case dealt with a specific immunity statute, the reasoning is just as valid here.

The appellant has been convicted of the very crimes as to which the Government sought to immunize him under the Statute, but he is beyond immunity for any transactions had with Hugo Curbello and others to the Grand Jury unknown, dealing with 130 grams of cocaine, on the 7th of November, 1972.

The other questions put to him by the Grand Jury, which referred to his knowledge of and transactions with five named defendants, probably related to the activities with "others to the Grand Jury unknown" charged in the indictment, and which were encompassed in his plea of guilty.

The telex and letter of authorization from the Assistant Attorney General specifically named the indictment as the matter under investigation. That the witness understood that it was this information which the Grand Jury sought is evident from his repeated explanation for his refusal to testify that he had pleaded guilty to those crimes and should not have to testify.

More than enough has been demonstrated by the appellant to shift the burden on the Government to make at least the "modest showing" that it sought information as to crimes other than those contained in the indictment.

In In Re Goldberg, supra, this Court held that a "potential defendant at a later trial", i.e. one who had been arrested and arraigned, is included in the definition of witness under Sec. 6002, and could be compelled to testify, on condition, however, that the Grand Jury would not be asked to indict him, because if he were really immunized, he should

not be indicted. The language of the Court referring to the witness as a "potential defendant", and as one "arrested or arraigned," certainly limits the application of that authority. Judge Oakes concurring, expressed his reluctance at extending the immunity statute to include persons who had been "arrested."

There appears to be no authority dealing with the precise question here, which is surprising, considering the numerous Immunity Orders. Perhaps the Government does not usually use the Immunity Statutes to obtain testimony from a convicted defendant against his co-defendant who is awaiting trial. Normally this is done by bargaining - not by compulsion.

Finally, a plea of guilty terminates a prosecution just as effectively as a jury verdict. The Government could not compel this witness's testimony against his wishes on a trial - it may not do so indirectly under the guise of immunizing him from that for which he cannot be immunized.

Not only is the immunity not "co-extensive with the scope of the privilege" (Kastigar v. U.S., 406 U.S. 441, at 449 (1972)), it never existed!

Technical definitions aside, what has happened here and the position in which the Government has placed

this appellant, through its misuse of the Immunity Statute, is so unfair as to warrant a summary reversal of this conviction even if appellant had been accorded procedural due process.

He has been convicted and sentenced to eighteen months in jail, two days of which he has already served. This is in addition to the sentence he will receive in Ohio.

His sentence in Ohio was set for a day certain at the request of the Government - after his appearance before the Grand Jury. Had he testified, the U. S. Attorney would have informed the sentencing Court in order to affect his sentence; but he has refused, justifiably, and stands convicted of contempt, and counsel is reliably informed, by Ohio counsel, that the Court in Ohio has been notified of this in order to affect the severity of his sentence. It is too late to obtain an order prohibiting the prosecutor from communicating any of this to the sentencing judge, as was suggested in U. S. v. Wilson & Bryan, supra.

CONCLUSION

The Order of Contempt must be vacated and set aside (1) because appellant was deprived of due process at all stages of the proceedings;

(2) because the Order of Immunity upon which the contempt was predicated was a nullity; and

(3) because Appellant has shown just cause for his refusal to testify.

Respectfully submitted,

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August 2, 1974

§ 1826. Recalcitrant witnesses

(a) Whenever a witness in any proceeding before or ancillary to any court or grand jury of the United States refuses without just cause shown to comply with an order of the court to testify or provide other information, including any book, paper, document, record, recording or other material, the court, upon such refusal, or when such refusal is duly brought to its attention, may summarily order his confinement at a suitable place until such time as the witness is willing to give such testimony or provide such information. No period of such confinement shall exceed the life of—

(1) the court proceeding, or

(2) the term of the grand jury, including extensions,

before which such refusal to comply with the court order occurred, but in no event shall such confinement exceed eighteen months.

(b) No person confined pursuant to subsection (a) of this section shall be admitted to bail pending the determination of an appeal taken by him from the order for his confinement if it appears that the appeal is frivolous or taken for delay. Any appeal from an order of confinement under this section shall be disposed of as soon as practicable, but not later than thirty days from the filing of such appeal.

Added Pub.L. 91-452, Title III, § 301(a), Oct. 15, 1970, 84 Stat. 932.

§ 6002. Immunity generally

Whenever a witness refuses, on the basis of his privilege against self-incrimination, to testify or provide other information in a proceeding before or ancillary to—

(1) a court or grand jury of the United States,

(2) an agency of the United States, or

(3) either House of Congress, a joint committee of the two Houses, or a committee or a subcommittee of either House,

and the person presiding over the proceeding communicates to the witness an order issued under this part, the witness may not refuse to comply with the order on the basis of his privilege against self-incrimination; but no testimony or other information compelled under the order (or any information directly or indirectly derived from such testimony or other information) may be used against the witness in any criminal case, except a prosecution for perjury, giving a false statement, or otherwise failing to comply with the order.

Added Pub.L. 91-452, Title II, § 201(a), Oct. 15, 1970, 84 Stat. 927.

§ 6003. Court and grand jury proceedings

(a) In the case of any individual who has been or may be called to testify or provide other information at any proceeding before or ancillary to a court of the United States or a grand jury of the United States, the United States district court for the judicial district in which the proceeding is or may be held shall issue, in accordance with subsection (b) of this section, upon the request of the United States attorney for such district, an order requiring such individual to give testimony or provide other information which he refuses to give or provide on the basis of his privilege against self-incrimination, such order to become effective as provided in section 6002 of this part.

(b) A United States attorney may, with the approval of the Attorney General, the Deputy Attorney General, or any designated Assistant Attorney General, request an order under subsection (a) of this section when in his judgment—

(1) the testimony or other information from such individual may be necessary to the public interest; and

(2) such individual has refused or is likely to refuse to testify or provide other information on the basis of his privilege against self-incrimination.

Added Pub.L. 91-452, Title II, § 201(a), Oct. 15, 1970, 84 Stat. 927.